

UNITED STATES DEPARTMENT OF AGRICULTURE USDA
BEFORE THE SECRETARY OF AGRICULTURE
OALJ/HCO

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In re:

Freshway Produce, Inc.,

Respondent

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PACA Docket No. D-00-0024

RECEIVED

Decision Without Hearing
by Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (hereinafter referred to as the "Act"), instituted by a Complaint filed on August 29, 2000, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period November 1998 through March 1999, Respondent Freshway Produce, Inc., (hereinafter "Respondent") failed to make full payment promptly to 17 sellers, of the agreed purchase prices, or balances thereof, in the total amount of \$223,879.74 for 52 lots of perishable agricultural commodities which it received, accepted and sold in interstate and foreign commerce.

The Hearing Clerk's efforts to serve the Complaint by Certified Mail were not successful and the Complaint and accompanying data were subsequently served on Respondent in conformity with Section 1.147 of the Rules of Practice. Respondent has not answered the Complaint. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Finding of Fact

1. Respondent is a corporation organized and existing under the laws of the state of Florida. Its business address was 831 N.W. 21st Terrace, Miami, Florida 33127. Its mailing address is 15476 N.W. 77th Court, #437, Miami Lakes, Florida 33016.

2. At all times material to the allegations in the Complaint, Respondent was licensed under the provisions of the PACA. License number 981129 was issued to Respondent on April 29, 1998. This license terminated on April 29, 1999, pursuant to Section 4(a) of the PACA, when Respondent failed to pay the required annual renewal fee.

3. As more fully set forth in paragraph III of the Complaint, during the period November 1998 through March 1999, Respondent purchased, received, and accepted in interstate and foreign commerce, from 17 sellers, 52 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$223,879.74.

Conclusions

Respondent's failure to make full payment promptly with respect to the 52 transactions set forth in Finding of Fact No. 3 above, constitutes willful, repeated and flagrant violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. 499b), and the facts and circumstances set forth above, shall be published.

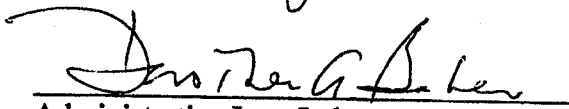
This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. 1.139 and 1.145).

Copies hereof shall be served upon parties.

Done at Washington, D.C.

this 19th day of June, 2006


Administrative Law Judge